

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**JESSY MANGAHAS, and PITHCHAYA  
WOHLFAHRT, on behalf of themselves  
and all others similarly situated,**

**Case No. 22 Civ. 04150 (LJL)**

**Plaintiffs,**

**-against-**

**EIGHT ORANGES INC. DBA THE BAO;  
CHIBAOLA, INC. DBA ULUH; JOANNE  
HONG BAO, individually, and RICHARD  
LAM, individually,**

**Defendants.**

**JOINT PRETRIAL ORDER**

**I. CAPTION**

The caption in this matter remains *Jessy Mangahas and Pithchaya Wohlfahrt, on behalf of themselves and all others similarly situated v. Eight Oranges Inc. d/b/a The Bao; Chibaola, Inc. d/b/a Uluh; Joanne Hong Bao, individually, and Richard Lam, individually.*

**II. TRIAL COUNSEL**

**A. Plaintiffs' Counsel:**

Brian S. Schaffer  
Armando A. Ortiz  
Katherine Bonilla  
FITAPELLI & SCHAFER, LLP  
28 Liberty Street, 30<sup>th</sup> Floor  
New York, New York 10005  
T: (212) 300-0375  
[bschaffer@fslawfirm.com](mailto:bschaffer@fslawfirm.com)  
[aortiz@fslawfirm.com](mailto:aortiz@fslawfirm.com)  
[bschaffer@fslawfirm.com](mailto:bschaffer@fslawfirm.com)

## **B. Defendants' Counsel**

Jonathan Ng  
Rolanzo R. White  
WHITE & NG, LLC  
190 Moore Street, Suite 204  
Hackensack, New Jersey 07601  
T: (201) 968-5022  
jonathan@whiteng.co  
rolanzo@whiteng.co

## **III. SUBJECT MATTER JURISDICTION**

### Plaintiffs' Position:

This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 because Plaintiffs bring individual and collective wage claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”). The Court also has supplemental subject matter jurisdiction pursuant to 28 U.S.C. § 1337(a) because Plaintiffs also bring individual and class wage claims under the New York Labor Law (“NYLL”) and these claims are related to the FLSA claims so as they form part of the same case or controversy. Applying supplemental jurisdiction to this case is well in line with the practice of other courts within this Circuit, as such state law claims requires “considering evidence of the hours plaintiffs worked, the rate and method by which they were paid, the amounts they were paid, and the parties’ records (or lack thereof) on these subjects.” *See Zabrodin v. Silk 222, Inc.*, 702 F. Supp. 3d 102, 113–14 (E.D.N.Y. 2023) (assuring itself of supplemental jurisdiction over NYLL claims, including wage notice and wage statement, and tip regulations).

### Defendants' Position:

Defendants concur with Plaintiffs' Position regarding this Court's original and supplemental subject matter jurisdiction.

## IV. REMAINING ISSUES TO BE TRIED

### A. Plaintiffs' Remaining Issues to be Tried:

Plaintiffs submit the following issues (and sub-issues where appropriate) remain to be tried after the Court's October 22, 2024 Summary Judgment Order ("SJ Order"):

#### 1. Individual Liability:

- a. Whether defendant Joanne Hong Bao is an individual employer under the FLSA and NYLL. *See* 29 U.S.C. § 203(d) (an employer is defined as "any person acting directly or indirectly in the interest of an employer in relation to an employee . . ."); NYLL § 190.

#### 2. Wage Theft Prevention Act Causes of Action (ninth and tenth cause of action in Second Amended Complaint):

- a. Whether there are concrete injuries sufficient for standing for Plaintiffs' individual and class Wage Theft Prevention Act Claims in line with the Second Circuit's recent decision in *Guthrie v. Rainbow Fencing Inc.*, 2024 WL 3997427, at \*1 (2d Cir. Aug. 30, 2024).
- b. If a concrete injury is established, whether the wage notices comply with NYLL § 195(a)(1).
- c. If a concrete injury is established, whether wage statements comply with NYLL § 195(a)(3).
- d. If the wage notices and wage statements are not in compliance with NYLL § 195(a)(1) and (a)(3), what are the damages for this violation of the WTPA.

#### 3. FLSA Minimum Wage/NYLL Unlawful Deduction:

- a. Whether Defendants instituted policy of unlawful deductions for wrong orders, breakage, and customer walk outs in violation of the FLSA, 29 U.S.C. § 206 and NYLL § 193.

#### 4. NYLL Uniform Cost Violation:

- a. Because the Court found in the SJ Order Defendants instituted

an unlawful uniform policy (SJ Order at 46-47), the remaining issue is an approximation of how much Plaintiffs expended on uniforms.

**5. Jessy Mangahas Retaliation (individual)**

- a. Whether Defendants violated the anti-retaliation provisions of the FLSA, 29 U.S.C. § 216 and NYLL § 215.
- b. What damages may Ms. Mangahas receive if retaliation is proven.

**6. Pithchaya Wohlfahrt Retaliation (individual)**

- a. Whether Defendants violated the anti-retaliation provisions of the FLSA, 29 U.S.C. § 216 and NYLL § 215.
- b. What damages may Ms. Wohlfahrt receive if retaliation is proven.

**Issues To be Attended to Prior to Trial:**

**1. Class Differential Damages:**

- a. Per the Court's Order (Dk. No. 168), the Parties are currently working on a potential stipulation on class differential damages, misappropriated tips, and liquidated damages on these claims. This stipulation or a renewed motion for summary judgment is due November 15, 2024.

**Issues No Longer to be Tried:**

1. Plaintiffs are no longer seeking tip misappropriation damages under the NYLL § 196-d for the positions of dessert cooks, soup dumpling chefs, expeditors, or food packers, and are no longer seeking spread of hour damages. As a result, trial is not needed to determine on these issues.
2. Issues decided by the Court in the SJ order do not require any trial time.

**B. Defendants' Position: Defenses Remaining to be Tried**

**1. Individual Liability of Joanne Hong Bao**

- a. Defendants maintain that Ms. Hong Bao is not individually liable, as she is not an “employer” of the Plaintiffs pursuant to the Fair Labor Standards

Act, 29 U.S.C. § 203(d) and New York Labor Law, NYLL § 190.

2. Wage Theft Prevention Act Causes of Action

- a. Plaintiffs have no standing to bring causes of action under New York's Wage Theft Prevention Act as they have no concrete injuries. *Guthrie v. Rainbow Fencing Inc.*, 2024 WL 3997427, at \*1 (2d Cir. Aug. 30, 2024). Furthermore, the wage statements and notices provided by Defendants to Plaintiffs comply with NYLL § 195(a)(1) & (3), therefore, Plaintiffs are not entitled to damages under their WTPA claims.

3. Defendants' Alleged Unlawful Deductions

- a. Defendants did not institute a policy of unlawful deductions for wrong orders, breakage, and/or customer walk outs that would have been a violation of the FLSA, 29 U.S.C. § 206 and NYLL § 193.

4. Individual Retaliation Claims of Jessy Mangahas and Pithchaya Wohlfahrt

- a. Defendants maintain that any action or decisions regarding Ms. Mangahas and Mrs. Wohlfahrt's employment at Uluh and/or The Bao stemmed from a legitimate business rationale and was not retaliatory in nature. Therefore there was no retaliation against Ms. Mangahas and Mrs. Wohlfahrt pursuant to the FLSA, 29 U.S.C. § 216 and NYLL § 215.

5. Defendants' reserve all defenses stated in their Answer and Affirmative and Other Defenses to Plaintiffs' Second Amended Collective and Class Action Complaint that have not already been decided by the Court in the SJ motion.

**Issues To be Attended to Prior to Trial:**

1. Class Differential Damages:

- a. Per the Court's Order (Dk. No. 168), the Parties are currently working on a potential stipulation on class differential damages, misappropriated tips, and liquidated damages on these claims. This stipulation or a renewed motion for summary judgment is due November 15, 2024.

**Issues No Longer to be Tried:**

1. Issues decided by the Court in the SJ order do not require any trial time.

## V. BENCH V JURY

### A. Plaintiffs' Position

This is a bench trial. Plaintiffs conferred with Defense Counsel as to having direct testimony via declaration to speed things along. Defendants object to the use of direct via declaration. Thus, given witnesses will be live, we anticipate a full 5 days will be needed.

### B. Defendant's Position

This is a bench trial. Defendants have conferred with Plaintiffs' Counsel, and Defendants anticipate a full five (5) days will be needed for trial as Defendants do not consent to Plaintiffs proposal of direct testimony via declaration.

## VI. POTENTIAL JUROR STATEMENT – N/A

## VII. LIST OF PEOPLE, PLACES, INSTITUTIONS FOR JURORS – N/A

## VIII. MAGISTRATE JUDGE CONSENT

The Parties do not consent to trial by magistrate judge.

## IX. TRIAL WITNESS LIST

Below are the Parties integrated witness list:

	<b>Witness</b>	<b>Calling Party</b>	<b>Method</b>	<b>Interpreter?</b>	<b>Brief Summary</b>
1	Jessy Mangahas	P & D	Live	None	Plaintiffs' Summary: Ms. Mangahas will testify as to the terms and conditions of her employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on her and others, the amounts of uniforms paid for, unlawful deductions, her experiences with retaliation after

					<p>instituting this lawsuit and damages stemming from such retaliation</p> <p>Defendants' Summary:</p> <p>Ms. Mangahas will be examined regarding the terms and conditions of her employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm Plaintiffs allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, her individual retaliation claims stated in the complaint, and any other remaining claims in Plaintiffs' Second Amended Complaint.</p>
2	Pithchaya Wohlfahrt	P & D	Live	Yes – Thai (paid and arranged by P)	<p>Plaintiffs' Summary:</p> <p>Mrs. Wohlfahrt will testify as to the terms and conditions of her employment with Defendants, Ms. Hong</p>

					<p>Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on her and others, the amounts of uniforms paid for, unlawful deductions, her experiences with retaliation after joining this lawsuit and damages stemming from such retaliation</p> <p>Defendants' Summary:</p> <p>Mrs. Wohlfahrt will be examined regarding the terms and conditions of her employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm Plaintiffs allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, her individual retaliation claims stated in the complaint, and any other remaining claims in Plaintiffs' Second Amended Complaint.</p>
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3	Upendra Shahi	P & D	Live	None	<p>Plaintiffs' Summary:</p> <p>Mr. Shahi will testify as to the terms and conditions of his employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the amounts of uniforms paid for, unlawful deductions.</p> <p>Defendants' Summary:</p> <p>Mr. Shahi will be examined regarding the terms and conditions of his employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.</p>
4	Jason Quijije	P	Live	None	Mr. Quijije will testify as to the terms and

					conditions of his employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the amounts of uniforms paid for, unlawful deductions.
<b>5</b>	Jose Roman	P	Live	None	Mr. Roman will testify as to the terms and conditions of his employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the uniform policy, unlawful deductions.
<b>6</b>	Yongfend Situ	P & D	Live	Mandarin or Cantonese (paid and arranged by P)	<p>Plaintiffs' Summary:</p> <p>Mr. Situ will testify as to the terms and conditions of his employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the uniform policy, unlawful deductions.</p> <p>Defendants' Summary:</p> <p>Mr. Situ will be examined regarding</p>

					the terms and conditions of his employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.
7	Yi Zhang	P	Live	Mandarin or Cantonese (paid and arranged by P)	Ms. Zhang will testify as to the terms and conditions of her employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the amounts of uniforms paid for, unlawful deductions.
8	Ying Ying Yuan	P & D	Live	Cantonese (paid and arranged by P)	Plaintiffs' Summary: Ms. Yuan will testify as to the terms and conditions of her employment with Defendants, Ms. Hong Bao's involvement in the management of the restaurants, the effect improper wage notices and statements had on him and others, the amounts of uniforms

					<p>paid for, the unlawful deductions policies.</p> <p>Defendants' Summary:</p> <p>Ms. Yuan will be examined regarding the terms and conditions of her employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.</p>
9	Richard Lam (individually and as corporate representative)	P & D)	Live	None	<p>Plaintiffs' Summary:</p> <p>Mr. Lam will be examined as to company wage and hour policies and practices related to the remaining wage claims; Mr. Lam will be examined regarding the Named Plaintiffs' individual retaliation claims.</p> <p>Defendants' Claims:</p> <p>Mr. Lam will testify</p>

					as to the restaurants' wage and hour policies and practices, any of the Plaintiffs' remaining wage claims, Defendants' WTPA violations, Plaintiffs' claims of unlawful deductions under the FLSA/NYLL, Plaintiffs' claims of NYLL's uniform cost violation, the number of class members, and the Named Plaintiffs' individual retaliation claims.
<b>10</b>	Joanne Hong Bao	P & D	Live	Mandarin (arranged by D)	<p>Plaintiffs' Summary:</p> <p>Mrs. Hong Bao will be examined regarding her job duties at the restaurants and related matters relevant to whether she is an individual employer under the FLSA/NYLL.</p> <p>Defendants' Claims:</p> <p>Ms. Hong Bao will testify about her role and duties at the restaurants and any other relevant matters to determine whether she was an employer under the FLSA/NYLL and her individual liability under the</p>

					FLSA/NYLL.
<b>11</b>	Yunrui Du	D	Live	Mandarin (arranged by D)	<p>Defendants' Summary:</p> <p>Mr. Du will be examined as to the restaurants' wage and hour policies and practices, any of the Plaintiffs' remaining wage claims, Defendants' WTPA violations, Plaintiffs' claims of unlawful deductions under the FLSA/NYLL, Plaintiffs' claims of NYLL's uniform cost violation, the number of class members, Ms. Hong Bao's involvement in the restaurants' operations, and the Named Plaintiffs' individual retaliation claims.</p>
<b>12</b>	Lu Mei Zhang	D	Live	Cantonese or Mandarin (arranged by D)	<p>Defendants' Summary:</p> <p>Ms. Zhang will be examined as to the restaurants' wage and hour policies and practices, any of the Plaintiffs' remaining wage claims,</p>

					Defendants' alleged WTPA violations, Plaintiffs' claims of unlawful deductions under the FLSA/NYLL, Plaintiffs' claims of NYLL's uniform cost violation, the number of class members, and the Named Plaintiffs' individual retaliation claims.
13	Linze Wu	D	Live	Cantonese or Mandarin (arranged by D)	Defendants' Summary:  Mr. Wu will be examined regarding the terms and conditions of his employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.
14	Wen Bin Zhu	D	Live	Cantonese or Mandarin (arranged by D)	Defendants' summary:  Mr. Zhu will be examined regarding the terms and conditions of his employment with the restaurants, Ms. Hong

					Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.
15	Zeqi Zhou	D	Live	Cantonese or Mandarin (arranged by D)	Defendants' summary:  Ms. Zhou will be examined regarding the terms and conditions of her employment with the restaurants, Ms. Hong Bao's involvement in the restaurants, the damages and harm allegedly suffered from Defendants' improper wage notices and statements, the amount employees paid for uniforms, unlawful deductions, and any other remaining claims in Plaintiffs' Second Amended Complaint.
16	Suttiprapa Rachata	D	Live	n/a	Defendants' Summary:  Ms. Rachata will testify as to Ms. Hong Bao's duties and

					responsibilities at the restaurants.
17	Napatwaran Ammuaychottha	D	Live	n/a	<p>Defendants' Summary:</p> <p>Ms. Amnuaychottha will testify as to Ms. Hong Bao's duties and responsibilities at the restaurants.</p>

## X. DEPOSITION DESIGNATIONS

### A. Plaintiffs' Deposition & Defendants' Counter Designations & Objections:

Witness	Plaintiffs Designation	Defendants Counter Designation	Defendants' Objections
Keno Dacusin	11:15 -12:8	21:1 - 27:17	
Keno Dacusin	16:10 - 17:18		
Keno Dacusin	21:1 - 8		
Keno Dacusin	29:5 -12		
Keno Dacusin	29:16 - 24		
Keno Dacusin	31:6 - 19		FRE 403: unfair prejudice
Keno Dacusin	35:13 - 36:1		FRE 403: unfair prejudice
Keno Dacusin	41:23 -25	42:1 - 43:11	FRE 403: unfair prejudice
Keno Dacusin	42:3 - 21	42:1 - 43:11	FRE 403: calls for speculation and unfair prejudice
Keno Dacusin	43:19-23	43:6 - 11	FRE 403: unfair prejudice

Keno Dacusin	60:17 - 61:14		
Wen Bin Zhu	9:13-20		FRE 403: unfair prejudice FRE 802: hearsay
Wen Bin Zhu	9:21-12:1		
Wen Bin Zhu	12:2-13:17		
Wen Bin Zhu	20:19 - 15	20:21 - 22:13	FRE 403: unfair prejudice
Wen Bin Zhu	23:10 - 24:16		
Wen Bin Zhu	25:18-25		FRE 802: hearsay
Wen Bin Zhu	26:11 -28:4		FRE 403: unfair prejudice
Wen Bin Zhu	49:18- 24		

### **B. Defendants' Deposition, Counter Designations, and Objections:**

Defendant objects to the admission of Plaintiffs' designated deposition excerpts as evidence at trial on the grounds that they fail to meet the criteria for admissibility under Federal Rule of Evidence 802 and do not qualify under any applicable exceptions to the hearsay rule. Furthermore, the designated portions present an undue risk of unfair prejudice and confusing the issues under Rule 403. Defendant requests that the Court exclude these deposition designations from evidence accordingly.

\*\*Defendants reserve the right to introduce prior sworn testimony of Plaintiffs or any other witness for impeachment, rebuttal, or any other purposes permitted by the Federal Rules of Evidence.

## XI. EXHIBIT LIST & OBJECTIONS

### Plaintiffs' Exhibit List

Plaintiffs reserves the right to offer additional exhibits, including but not limited to deposition testimony transcripts, for the purpose of impeachment.

Name	Bates	Exhibit List Description	Objection, if any? Otherwise, * for no objection
PX-01.pdf	D. Docs 002843, 2838, 2836, 2832, 2827, 2823, 2819, 2815,	Wage Notices	*
PX-02.pdf	P-JM-010-020	Paystubs	*
PX-03.pdf	P-JM-00021-00053	Schedules	*
PX-04.pdf	D Docs 000109; D Docs 000095; D Docs 000090; D Docs 000083; D Docs 000143; D Docs 00123; D Docs 000114; D Docs 000154; D Docs 000195; D Docs 000203; D Docs 000214; D Docs 000216; D Docs 000232	Timecard Paystubs	*
PX-05.pdf	P-PW-000005;; P-PW-000018 - P-PW000038; P-PW-000049	Paytubs	*
PX-06.pdf	Not Labeled by Defendants	Timecard Paystubs	*
PX-07.pdf	P-US-00086 - P-US-00093; P-US-00095-P-US-00096	Timecards	*
PX-08.pdf	D Docs 000674; D Docs 000664; D Docs 000611; D Docs 000622; D Docs 000616; D Docs 000647; D Docs 000638; D	Timecard Paystubs	*

	Docs 000676; D Docs 000675; D Docs 000648; D Docs 000650; D Docs 000654		
PX-09.pdf	P-JQ-00026-00033	Paystubs	*
PX-10.pdf	P-JQ-001-025	Time Cards	*
PX-11.pdf	D Docs 000001; D Docs 000069; D Docs 000076; D Docs 000059; D Docs 000003; D Docs 000031; D Docs 0000042; D Docs 000056	Timecard Paystubs	*
PX-12.pdf	P-JR-000013; P-JR-000014; P-JR-000028	Paystubs	*
PX-13.pdf	P-YS-0001-0044	Paystubs	*
PX-14.pdf	D Docs 000801; D Docs 000816; D Docs 000831; D Docs 00083	Timecard Paystubs	*
PX-15.pdf	P-YZ-0001-0007	Paystubs	*
PX-16.pdf	D Docs 000771 - D Docs 000779	Timecard Paystubs	*
PX-17.pdf	P-YY-0009-0010	Paystubs	*
PX-18.pdf	YY-0007-0008	Time Cards	*
PX-19.pdf	D Docs 000780; D Docs 000782; D Docs 000793; D Docs 000797; D Docs 000798; D Docs 0000799	Timecard Paystubs	*
PX-20.pdf	Discovery Responses	Defendants Responses to RFP,	*
PX-21.pdf	P-JM-00155-201	Liquor License Application	FRE 401 - Objection as to relevance. FRE 403 - Undue prejudice outweighs probative value.

PX-22.pdf	JM-00088-105	Text Message	*
PX-23.pdf	P-YY-00011-00012	Text Message	*
PX-24.pdf	Affidavit	Affidavit	*
PX-25.pdf	Pleading	Demand Letter	*
PX-26.pdf	P-JM0078-083	Text Message	*
PX-27.pdf	JM-0035-47	Schedules	*
PX-28.pdf	P-WC00054	Tip Sheet	*
PX-29.m4a	P-JM00095 Audio	Audio Recording	FRE 403 - Undue prejudice outweighs probative value.
PX-30.PDF	P-JM-00095 Transcript	Transcript	FRE 403 - Undue prejudice outweighs probative value.
PX-31.m4a	P-JM00096 Audio	Audio Recording	FRE 403 - Undue prejudice outweighs probative value.
PX-32.PDF	P-JM00096 Transcript	Transcript	FRE 403 - Undue prejudice outweighs probative value.
PX-33.m4a	P-JM-00097 Audio	Audio Recording	FRE 403 - Undue prejudice outweighs probative value.
PX-34.PDF	P-JM00097 Transcript	Transcript	FRE 403 - Undue prejudice outweighs probative value.
PX-35.pdf	P-JM-00096 Transcript	Transcript	FRE 403 - Undue prejudice outweighs probative value.
PX-36.pdf	D Docs 002715- 2723	Text Message	*
PX-37.pdf	D Docs 002739- 2743	Text Message	*
PX-38.pdf	P-WC0059-0062	Tip Sheets	*
PX-39.pdf	P-PW0037-49	Policies	*
PX-40.pdf	P-PW010-013	Text Message	*

PX-41.pdf	P-TK-00012-14	Text Message	*
PX-42.m4a	P-JM-00098 Audio	Audio Recording	FRE 403 - Undue prejudice outweighs probative value.
PX-43.pdf	Pleading	Pleading - Second Amended Complaint	*
PX-44.pdf	Pleading	Pleading - Answer to Second Amended Complaint	*
PX-45.pdf	Pleading	Discovery - Hong Bao Interrogatory Responses	*
PX-46.pdf	Discovery	30(b)(6) Deposition Notice	*
PX-47.pdf	Discovery	Discovery - Initial Disclosures	*
PX-48.pdf	P-PW0035-38	Policy Documents	
PX-49.pdf	D Docs 002748-D Docs 002759	Policy Documents	*
PX-50.pdf	ECF No. 56	Consent Form	*
PX-51.pdf	Plaintiffs Damages 429 et seq	Class differential misappro tips interest	FRE 403 - Undue prejudice outweighs probative value. FRE 602 - Lack of personal knowledge
PX-52.pdf	Plaintiffs Summary 000001	1006 Summary of Payroll Records	*
PX-53.pdf	Plaintiffs Summary 000015	1006 Summary of Payroll Records	*
PX-54.pdf	Plaintiffs Summary 000018	1006 Summary of Payroll Records	*
PX-55.pdf	Plaintiffs Summary 000024	1006 Summary of Payroll Records	*
PX-56.pdf	Plaintiffs Damages 0429 - Uniform	Damages	FRE 403 - Undue prejudice outweighs probative value. FRE 602 - Lack of personal knowledge

PX-57 (Native)	Native	Plaintiffs Damages 429 et seq. (NATIVE)	FRE 403 - Undue prejudice outweighs probative value. FRE 602 - Lack of personal knowledge
PX-58.pdf	P-PW-010-16	Text Messages	*
PX - 59		Keno Dacusin Deposition Designation Excerpts	FRE 403 - Undue prejudice outweighs probative value. FRE 602 - Lack of personal knowledge FRE 802 - Hearsay
PX - 60		Wen Bin Zhu Deposition Designation Excerpts	FRE 403 - Undue prejudice outweighs probative value. FRE 602 - Lack of personal knowledge FRE 802 - Hearsay

**Defendants' Exhibits:**

Defendants reserves the right to offer additional exhibits, including but not limited to deposition testimony transcripts, for the purpose of impeachment.

Exhibit Number	Description	If *, no objection made. Otherwise, objection basis (with Advance ruling requested notated as applicable)
DX-1	Plaintiffs' Second Amended Complaint	*
DX-2	Defendants' Second Amended Answer	*
DX-3	Jason Cedeno's RROGs, 11/23/2022	*
DX-4	Keno Dacusin RROGs, 11/23/2022	*
DX-5	Meiling Huang RROGs, 11/23/2022	*
DX-6	Tsz Wing Lam RROGs, 11/23/2022	*
DX-7	Upendra Shahi RROGs, 11/23/2022	*
DX-8	Wen Bin Zhu RROGs, 11/23/2022	*
DX-9	Wochao Chen RROGs, 11/23/2022	*

DX-10	Ying Ying Yuan RROGs, 11/23/2022	*
DX-11	Yongfeng Situ RROGs, 11/23/2022	*
DX-12	Jinnapat Nutcharat RROGs, 11/23/2022	*
DX-13	Rattanachai Chailangka RROGs, 11/23/2022	*
DX-14	Vorrawalan Aphiromdechanon RROGs, 11/23/2022	*
DX-15	Yi Zhang RROGs, 11/23/2022	*
DX-16	Jessy Mangahas RROGs, 11/23/2022	*
DX-17	Thinley Kalsang RROGs, 11/23/2022	*
DX-18	Plaintiffs' RRFPs, 11/23/2022	*
DX-19	Plaintiffs' 5th Initial Disclosures	*
DX-20	Timecard and Paystub Sample for Jessy Mangahas (D Docs 000080- 000084)	*

DX-21	Timecard and Paystub Sample for Pithchaya Wohlfahrt	*
DX-22	Timecard and Paystub Sample for Upendra Shahi (D Docs 000606-000610)	*
DX-23	Timecard and Paystub Sample for Ying Ying Yuan (D Docs 000780-000784)	*
DX-24	Timecard and Paystub Sample for Yongfeng Situ (D Docs 000801-000805)	*
DX-25	Timecard and Paystub Sample for Jason Cedeno (D Docs 000001-000005)	*
DX-26	Timecard and Paystub Sample for Keno Dacusin (D Docs 000281-000285)	*
DX-27	Timecard and Paystub Sample for Thinley Kalsang (D Docs 000505-000509)	*
DX-28	Timecard and Paystub Sample for Vorrawalan Aphiromdechanon (D Docs 000680-000684)	*

DX-29	Timecard and Paystub Sample for Wochao Chen (D Docs 000740-000744)	*
DX-30	Timecard and Paystub Sample for Wen Bin Zhu (D Docs 000707-000711)	*
DX-31	Timecard and Paystub Sample for Yi Zhang (D Docs 000772-000776)	*
DX-32	Timecard and Paystub Sample for Prathana Phiphatchotika	*
DX-33	Timecard and Paystub for Zeqi Zhou (D Docs 000790-000792, 000800)	*
DX-34	Timecard and Paystub for Jie Yu Zeng	*
DX-35	Timecard and Paystub for Linze Wu	*
DX-36	Timecard and Paystub for Qiufen Wu	*
DX-37	Jason Cedeno Text Messages (P-JQ-00053-00055)	*

DX-38	Jessy Mangahas Text Messages (P-JM-00072-00088)	*
DX-39	Keno Dacusin Text Messages (P-KD-00018-00057)	*
DX-40	Thinley Kalsang Text Messages (P-TK-00007-00018)	*
DX-41	Vorrawalan Aphiromdechanon Text Messages (P-VA-00008-00010)	*
DX-42	Wen Bin Zhou Text Messages (P-WC-00068-00082)	*
DX-43	Wochao Chen Text Messages (P-WC-00020-00023)	*
DX-44	Ying Ying Yuan Text Messages (P-YY-00011-00012)	*
DX-45	Defendants' Text and WeChat Messages (D Docs 002715-002747)	*
DX-46	Uluh Restaurant Policies (P-JM-00001-00010)	*

DX-47	Hostess Responsibilities (P-JM-00054-00064)	FRE 401-402: Relevance for P-JM-0054-59. Documents do not relate to fact of consequence in determining remaining issues for trial
DX-48	Yongfeng Situ Photos (P-YS-00132-00133)	FRE 401-402: Relevance. Documents do not relate to fact of consequence in determining remaining issues for trial
DX-49	Defendants' Notice of Pay Forms (D Docs 002815, 002819, 002823, 002827, 002832, 002836, 002838, 002843)	*
DX-50	Jason Cedeno Paystubs (P-JQ-00026-00033)	*
DX-51	Jessy Mangahas Paystubs (P-JM-00010-00020)	*
DX-52	Keno Dacusin Paystubs (P-KD-00001-00004)	*
DX-53	Jinnapat Nutcharat Paystubs (P-JN-00003-00005)	*
DX-54	Thinley Kalsang Paystub (P-TK-00003)	*

DX-55	Vorrwalan Aphiromdechanon Paystubs (P-VA-00001-00002)	*
DX-56	Wen Bin Zhu Paystubs (P-WC-00066-00067)	*
DX-57	Wochao Chen Paystubs (P-WC-00001-00019)	*
DX-58	Jinnapat Nutcharat Checks (P-JN-00008-00010)	*
DX-59	Keno Dacisin Checks (P-KD-00005-00007)	*
DX-60	Meiling Huang Checks (P-MH-00024-00034)	*
DX-61	Wochao Chen Checks (P-WC-00024-00038)	*
DX-62	Yi Zhang Checks (P-YZ-00001-00007)	*
DX-63	Ying Ying Yuan Checks (P-YY-00009-00010)	*
DX-64	Yongfeng Situ Checks (P-YS-00001-00044)	*
DX-65	Deposition Excerpts of Keno Dacisin	*
DX-66	Deposition Excerpts of Wen Bin Zhu	*

## XII. STATEMENT OF DAMAGES

Plaintiffs submit that they are entitled to the following class damages:

Total	Damages
Minimum Wages	\$843,295.92
Overtime	\$106,914.06
Tip Misappropriation to Management	\$612,698.54
Uniform Costs	TBD when factual issue of approximate amount charged per person is decided by the Court
Unlawful deductions for breakage, customer walk outs	TBD when factual issue of approximate amount deducted per person is decided by the Court
NYLL Liquidated Damages	\$1,562,908.51, plus 100% of whatever additional uniform cost/unlawful deductions determined
NYLL Pre-and-Post Judgment Interest	To be calculated at 9%. Pre-trial Interest is currently calculated to be \$361,816.88.
WTPA Notice Damages	TBD when factual issue of standing and whether notice complied with WTPA is determined by the Court. If standing and liability is established, statutory damages of \$50 per day (up to \$5,000) per eligible Class Member.  Plaintiffs' proposed damages model provides calculator for the Court's use.
WTPA Statement Damages	TBD when factual issue of standing and whether wage statements complied with WTPA is determined by the Court. If standing and liability is established, statutory damages of \$250 per day (up to \$5,000) per eligible Class Member.  Plaintiffs' proposed damages model provides calculator for the Court's use.
Reason attorneys' fees and costs	TBD by the Court, to be filed after entry of any judgment

### Methodology:

PX-51 and PX-57 (NATIVE) utilize native payroll data where available, supplemented by our manual entry of PDF timecards for times without native data. These original records can be produced and/or made available for inspection pursuant to FRE 1006. The underlying payroll data (such as name, pay date, entity, pay rates, hours worked) were entered into a Microsoft excel sheet.

To assist the Court in determining damages pursuant to its SJ Order and any subsequent order, the Damages Model has pre-made formulas that identify individuals who were paid with the tip credit and calculate the tip credits taken against their wages. Individuals who opted out of the class are excluded from receiving any damages (though they are left in the model to capture tips they received for Plaintiffs' NYLL 196-d tip misappropriation claim). Misappropriated tips are simply the sum of the recorded tips received by tip-ineligible management as noted in the payroll records. PX-57 also determines the number of workweeks individuals worked as front of house workers, which will allow the Court to determine WTPA damages (if that claim is successful). Likewise, PX-57 has pre-made formulas that would allow the Court to determine what, if any, deductions and uniform cost damages are attributable to the Class (if that claim is successful).

Plaintiffs subject they are eligible for the following individual retaliation damages, in addition to the above damages.

Plaintiff	Damages & Methodology
Jessy Mangahas	<p>Backpay: \$27,166.75</p> <ul style="list-style-type: none"> <li>Prior to initiation of lawsuit, she was earning on average \$1,352 per week, inclusive of hourly wages and tips. This equates to \$225.33 per day worked.</li> <li>Schedule reduced to 1 day per week in July 2022.</li> <li>Employed through December 27, 2022 – 25 weeks</li> <li>(25 weeks x \$1,352) – (\$225.33 x 25 weeks) = \$28,166.75.</li> <li>1 Month of other employment in November 2022 as mitigation of damages – approximately \$1,000.</li> <li>Total back pay through last day of work: \$27,166.75.</li> </ul> <p>Liquidated damages: \$27,166.76</p> <ul style="list-style-type: none"> <li>Liquidated damages in an equal amount</li> </ul>

	<p>Compensatory Damages:</p> <ul style="list-style-type: none"> <li>• Amount to be determined by Court for garden variety emotional distress</li> </ul>
Pithchaya Wohlfahrt	<p>Backpay: \$6,078</p> <ul style="list-style-type: none"> <li>• Termination date – 3/1/2023</li> <li>• New employment – 3/29/2023, part time. \$600 to \$900 per week (assume \$750 per week)</li> <li>• Second job – 4/15/2023, part time, \$200-\$300 per week</li> <li>• Prior to termination, earning approximately \$1,263 per week, inclusive of hourly wages and tips.</li> <li>• 4 weeks x \$1,263 = \$5,052</li> <li>• 2 weeks x (\$1,263-\$750) = \$1,026</li> <li>• Total: \$6,078</li> </ul> <p>Liquidated Damages: \$6,078</p> <ul style="list-style-type: none"> <li>• Liquidated damages in an equal amount</li> </ul> <p>Compensatory Damages:</p> <ul style="list-style-type: none"> <li>• Amount to be determined by Court for garden variety emotional distress</li> </ul>
Reasonable Attorney's Fees and Costs	To be determined by the Court

**XIII. UNANIMOUS VERDICT – N/A**

**RESERVATION OF RIGHTS**

Subject to the ruling of this Court, the parties, by and through counsel, reserve their respective rights, as follows:

1. to amend and to supplement this Proposed Joint Pretrial Order;
2. to object to any of the opposing party's exhibits which have not been provided to the parties; and
3. to object to the opposing party's exhibits based on relevancy or other evidentiary grounds, regardless of whether a specific objection was listed in the JPTO.

Dated: November 12, 2024  
New York, New York

Respectfully submitted,

Dated: November 12, 2024  
New York, New York

**FITAPELLI & SCHAFFER, LLP**

By: /s/ Armando A. Ortiz  
Armando A. Ortiz  
Aortiz@fslawfirm.com  
Katherine Bonilla  
Kbonilla@fslawfirm.com  
28 Liberty Street, 30th Floor  
New York, New York 10005  
(212) 300-0375

*Attorneys for the Plaintiff and Class*

**WHITE AND NG, LLC**

By: /s/ Jonathan Ng  
Jonathan Ng  
Jonathan@whiteng.co  
Rolanzo White  
Rolanzo@whiteng.co  
190 Moore Street, Suite 204  
Hackensack, New Jersey 07601  
(201) 968-5022

*Attorneys for the Defendants*